IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.NO.7794 OF 2004
DATED 14-12-2006

BETWEEN
The Voltas Employees Cooperative House Building Society Limited, represented by its Secretary Sri K.Srinivasa Rao.

.. PETITIONER

And

The Government of Andhra Pradesh, rep by its Special Chief Secretary, Housing (CH) Department, Secretariat, Hyderabad and 13 others.

…RESPONDENTS

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.7794 OF 2004

ORDER:

This writ petition is filed by the Voltas Employees Cooperative House Building Society Limited (for short 'the Society') aggrieved by the orders passed under Section 77 of the Cooperative Societies Act, 1964 (for short 'the Act') in Memo No.2768/CH1/2003-9 dated 29.3.2004 issued by the 1st respondent and to quash the same as arbitrary and illegal.

It appears that in pursuance of an enquiry conducted under Section 51 of the Act, the official respondents launched criminal prosecution against the erstwhile managing committee members of the petitioner society and, in fact, on 14.12.2001, they were issued with show cause notices for the purpose of conducting an enquiry as required under section 60 of the Act (surcharge proceedings). On the same day, prosecution was also ordered to be launched against the managing committee members of the petitioner society. Aggrieved by the same, they filed a revision under Section 77 of the Act before the 1st respondent. The said revision was allowed, setting aside the orders of launching criminal prosecution. However, while allowing the revision petition, the 1st respondent had also gone into the questions, which were not at all raised in the revision and gave certain findings. Aggrieved by the same, the present writ petition is filed.

Heard learned counsel for the parties and perused the record.

It is an undisputed fact that enquiry under Section 51 of the Act was conducted and basing on the same, surcharge proceedings were initiated and later they were dropped. Aggrieved by the same, the petitioner herein carried the matter in appeal and the same is pending in CTA No.290 of 2005 and no stay was granted.

It is not necessary to go into all the details, inasmuch as, it is settled preposition that only after the surcharge proceedings under Section 60 of the Act are concluded and the delinquent has been held guilty, proceedings for criminal prosecution can be launched that too after obtaining prior approval from the Registrar of the Cooperative Societies. In the instant case, surcharge proceedings have been dropped and the appeal is pending before the Tribunal.

In this view of the matter, I am of the opinion that the impugned orders passed by the 1st respondent insofar as setting aside the criminal prosecution do not call for any interference by this Court under Article 226 of the Constitution of India. With regard to the findings arrived at by the 1st respondent so far as the election of the existing committee members and allotment of plots to 11 members is concerned, they are to be treated as non est in law, since the 1st respondent has gone into the questions which were not at all urged before it.

Accordingly, the writ petition is disposed of.

C.V.RAMULU,J

msv
Dt. 14.12.2006